



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN, TEXAS

PRICE DANIEL

ATTORNEY GENERAL

June 28, 1947

Honorable V. H. Sagebiel  
County Attorney  
Gillespie County  
Fredericksburg, Texas

Opinion No. V-275

Re: Authority of County  
Clerk to correct the  
record of an instru-  
ment improperly re-  
corded in the records  
of his office.

Dear Sir:

We refer to your letter of June 11, 1947, in which you submit the following:

"The county clerk of this county has requested information regarding his authority, if any, to make corrections in the county records of deeds, deeds of trust, etc., where it appears that at the time an instrument was recorded an omission of words, names or signatures was made, presumably through clerical error, and the error is discovered some years later."

We believe the correct rule is stated in 45 American Jurisprudence, page 459, section 71, where it is said:

"No custodian of records is authorized to tamper with them. Even where a record is defectively made, the recorder cannot correct the mistake on his own motion, especially where he acts at the suggestion of one not a party to the instrument; the alteration is to be disregarded, and the record is to be regarded as it stood before it was tampered with..."

The rule as stated in 53 Corpus Juris, page 618, Section 29, is:

"Although there is authority that the correction or alteration of a public record by the recording officer is without authority of law, it is generally held that a recording officer while in office may alter or amend his record by correcting mistakes or supplying omissions so as to make it conform to the facts; in fact, it has been held that it is the duty of the recording officer to correct mistakes and to

supply omissions in records whenever he discovers them from data in his office. Changes in a public record may be made only by or under official authority. It has been stated that the correction must be made by the officer who committed the error. One who is no longer in office cannot, without statutory authority, amend a record made by him while in office, or complete a record which he had begun but which was incomplete at the time he ceased to hold office; but an officer who is re-elected to the same office may amend a record made by himself in a former year while in office under a different election." (Emphasis added)

There is no Texas statute authorizing such corrections.

We note your reference to Article 6595, R.C.S., which requires recorders to "record every instrument of writing authorized to be recorded by him, which is deposited with him for record, with the acknowledgement, proofs, affidavits and certificates thereto attached, in the order deposited for record by entering them word for word and letter for letter. . . ."

Article 6596, R.C.S., reads:

"Every such instrument shall be considered as recorded from the time it was deposited for record; and the clerk shall certify under his hand and seal of office to every such instrument of writing so recorded, the hour, day, month and year when he recorded it, and the book and page or pages in which it is recorded; and when recorded deliver the same to the party entitled thereto."

Articles 6595 and 6596, when read together, mean that the instrument which bears the certificate required by Article 6596 is the instrument as recorded.

We are of the opinion that a county clerk is not authorized to make any change or correct any error in any deed or deed of trust record of his office which was made by any officer other than himself or his deputies. We do not mean to hold that any party may not have an improperly recorded instrument re-recorded omitting the former clerk's certificate. Possibly that procedure would serve the desired purpose in this case.

#### SUMMARY

A county clerk is not authorized to correct errors in the record of a deed or deed of trust which has been improperly recorded by a predecessor in office, but may

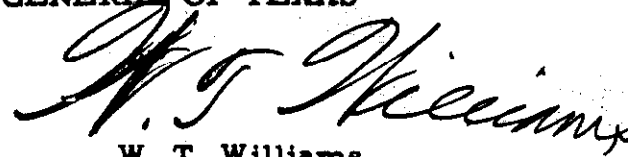
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correctly re-record such instrument in the proper  
records of his office.

Yours very truly,

ATTORNEY GENERAL OF TEXAS

By



W. T. Williams  
Assistant

WTW:sl

APPROVED



ATTORNEY GENERAL